IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5607 of 2007()

SC.351/2001 of ASST. PRL.SESSIONS COURT,THRISSUR

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PETITIONER/ACCUSED

UNNI @ UMESH, AGED 27 YEARS,
S/O.UNNIKRISHNAN, IYYANATH HOUSE,
VELLANIKKARA CHIRAKKAKODE, MADAKKATHARA, TRICHUR.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS:

STATE OF KERALA,
S.I. OF POLICE, MANNUTHI, (CR.NO.233/00),
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5607 of 2007

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Dated this the 17th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment along with the co-accused in S.C. 351 of 2001 pending before the Sessions Court, Trichur. He faces allegations, inter alia, under Section 307 r/w. 149 I.P.C. Consequent to the non-appearance of the petitioner before the Court of Sessions, a warrant of arrest has been issued against the petitioner by the learned Sessions Judge. The petitioner finds the said warrant of arrest issued by the learned Sessions Judge chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. The petitioner is willing to appear before the learned Sessions Judge, but he apprehends that his application for bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. The counsel therefore prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor opposes the application. He submits that the petitioner may be directed to appear before the Investigator or the learned Sessions Judge and then seek regular bail in the normal course.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Sessions Judge and explain to the learned Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Judge would not consider his applications for bail to be filed by the petitioner when the surrenders before the learned Judge, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary.

Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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